



IN THE
**SUPREME COURT OF THE
UNITED STATES**

October Term, 1945

No.

BASIL R. CRAMPTON,
Petitioner,

VS.

CRAMPTON MANUFACTURING COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I

THE OPINION OF THE COURT BELOW

The opinion for the Circuit Court of Appeals for the Sixth Circuit has not at the time of writing been reported in the Federal Reporter. It was filed January 28, 1946 and is reported in 68 *U.SP.Q.* 122. It is in the Transcript, page 184-192.

II.

JURISDICTION

The date of the judgment to be reviewed is January 28, 1946 (Trans. 183); rehearing denied March 11, 1946 (Trans. 209). The jurisdiction of the Supreme Court in this case is invoked under section 240-a of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347); and under section 5(b) of Rule 38 of the Supreme Court.

III.

STATEMENT OF THE CASE

A brief and summary statement of the facts of the case and of the subject matter involved is set forth in the petition for ceriorari. Some further amplification is thought desirable.

The validity of the claims in question — 11, 12 and 13 of the Crampton patent #2,233,159 (Trans. 148) is not a question herein. The patent was held valid by the District Court and expressly held valid by the Circuit Court of Appeals for the Sixth Circuit by a majority of the court; and the other Judge did not deny the validity but, in a dissenting opinion, contended that such Circuit Court of Appeals for the Sixth Circuit should not decide the validity question, but solely the question of infringement (Trans. 191-192).

The District Court held such claims 11, 12 and 13 infringed, basing such decision of infringement, as stated in his opinion (Trans. 19, 20), upon controlling facts as established by the record which were filed simultaneously with his opinion (Trans. 21 to 26).

Lack of identity of the structure, which is a subject matter of the patent, as defined in its claims 11, 12 and 13 and of the respondent's like structure was asserted by the respondent in its appeal, and its contention was sustained by the Circuit Court of Appeals for the Sixth Circuit, upon two *differing methods of assembly of the parts* in the patented structure (Trans. 148); not upon any lack of identity of the *completed structures as defined* by such claims 11, 12 and 13.

The rocking member of the flushing tank lever of the patent has an outside handle 7, an inside arm 5, known in the trade as the "lift arm", and a transverse connecting member 18 between the handle and the lift arm, all permanently secured together. On the part between the outside handle and the inside lift arm, the tank wall mounting fixture or spud 8 is located. When the structure is assembled, such handle-lever assembly is as though it was a *single*

integral part from one end of it to the other. But to get the spud in its place of location, with the transverse member 18 extending through it, such assembled rocking lever member is divided between its ends and made initially in two parts. The Crampton patent makes the handle as one part and makes the inside lift arm 5 and the transverse portion 18 which passes through the spud, as another part, from a bar of metal which is bent between its ends to make the two parts 5 and 18, one substantially at right angles to the other. The spud 8 is passed over the free end of the laterally bent extension 18 in Crampton, and then a *permanent*, normally unbreakable connection of the handle to the end of such extension 18 is made. This normally permanent connection is one which can be broken only by the application of a force sufficient to disrupt the metal of the handle where it is suaged into the notch 231 near the end of such extension 18, and overcoming its molecular cohesion, the same as any integral member of metal or other material can be disrupted only by pulling it apart and overcoming the cohesion with which the molecules of the material are attracted to each other.

In other words a durable, *permanent* handle and lever assembly is made which under all normal service, or abusive service to which it may be subjected, remains constant, as no force sufficient to disrupt the cohesion of the metal will ever be applied in its use. *It is, in every effect, integral.*

The respondent's lever made as disclosed in the patent to Pleasant, et al (Trans. 160-e) mounts the wall connected spud 21 on a cross connecting member between an outside handle and an inside lift arm. The handle is at 27 in Pleasant, et al, the inside lift arm at 15 and the cross connecting member has applied to it the reference numerals 33, 35; called in the Pleasant patent, a "spindle".

Such cross connecting member in Pleasant is cast integral with the handle and not with the lift arm. The spud is placed on it by slipping over it at its free end and the inside lift arm 15 is permanently and so securely connected with the part numbered 33, 35 that it will never separate under use and can be separated only by a force

which will disrupt and overcome the molecular cohesion of the metal, just like any integral structure is disrupted into two or more parts by force which will overcome the attractive cohesive force of the molecules to each other. Again, *in every effect, integral.*

In other words, there is a difference *in assembly*. Inasmuch as this completed lever member, having an outside handle and an inside lift arm and a cross connecting member, has to have the spud located with a cross connecting member extending through it, initially the completed handle lever members in both the patent and respondent's accused structure are made in two parts, so as to leave a free end of the cross connecting member over which to slip the spud; and thereafter, permanently inseparable and, in effect, integrally connect the parts so that they will be identical in all structural, operative and functional aspects when such permanent connection is made.

The Crampton patent slips the spud over one end of the cross connecting member and the Pleasant patent over the other end. Assembled, they are both off-set levers each with a spud located around the transverse connecting portion, making a rocking lever of the first class which rocks in the spud, both being the same as though integral from one end to the other.

Such is the difference and the only difference, not in completed structure as claimed, but in the method of making and assembly, which the lower court found, as an express fact finding, was merely a colorable difference, attaining identically the same objects the same way; as it obviously does.

For the findings of fact, the one numbered 11 (Trans. 24, 25) states as follows:

"The levers of the patent and of the defendants manufacture are each initially made of two parts which are permanently and rigidly secured together after the spud member has been mounted on one of the parts."

And earlier in such finding it is stated:

“The construction of tank lever as manufactured and sold by the defendant, (see exhibit 1 and 2) is substantially identical with the structure disclosed in the patent in suit, differing only in colorable departure in details of structure without change in essential structure.”

It is this finding of fact 11, clearly evident, not erroneous, but indisputably correct, that the Appellant Court ignored and in so doing violated Rule 52(a) of the Civil Procedure rules, established and ordered by the Supreme Court of the United States to be observed by Federal Circuit Courts of Appeals.

IV.

SPECIFICATION OF ERRORS

In the following particulars, it is submitted that the Circuit Court of Appeals for the Sixth Circuit erred:

1. In disregarding and failing to observe rule 52(a) of the rules of Civil Procedure established by the Supreme Court of the United States, which requires that the findings of fact of the United States District Court shall not be set aside unless clearly erroneous.

2. In finding no infringement of claims 11, 12 and 13 of the Crampton patent in suit, found by the District Court as its finding of fact No. 12 (Trans. 25).

3. In misdescribing the prior art and stating that the respondent's flush tank lever was more similar to it than to Crampton.

4. In wholly disregarding the substantial identity in structure, with only colorable departure in details of structure and method of assembly, without change in essential structure, disregarding identity in operation, identity in mounting, identity in permanence and simplicity of structure, identity in beneficial results obtained by the defendant by structural means,

identical structurally in a legal sense with the petitioner's patent, as clearly and expressly found by the District Trial Court as findings of fact.

5. In failing to follow and conform to the applicable decisions of the Supreme Court by which this question of infringement is controlled, but deciding the question of infringement in the way not only *probably* in conflict with the applicable decisions of the Supreme Court, but *certainly and definitely* in conflict with such applicable decisions.

6. In reaching the decision which it did by a species of deceptive and subtle argumentation and reasoning, contrary to all of the applicable decisions of the Supreme Court.

7. In ignoring direct and inescapable equivalency in every respect of the permanent, and in effect, integral structures of the rocking lever and handle member assemblies, such equivalency being admitted by the respondent's expert and major witness (Trans. 108-9).

V.

ARGUMENT

Validity

The question of validity is not one at issue in this case. The lower Court (Trans. 19) in its opinion, after referring to the findings simultaneously filed, stated that the prompt and practically complete abandonment by practically all competitors of the field far transcend the usual conceptions of commercial success, and that a substantial advance in a crowded art had been successfully attained by the plaintiff (petitioner herein) which was immediately recognized; and that the virtues of simplicity, durability, compactness, ease of mounting, and economy of production were very substantially advanced over the prior art. The Sixth Circuit Court of Appeals (Trans. 187), referring to the fact that the trial Court found that the Crampton patent was of a "simple, strong, durable

permanent construction, which Theleen is not", then stated "Crampton certainly achieved tremendous commercial success". It expressly held that claims 11, 12, 13 must be sustained as valid claims (Trans. 188). The appellate Court also held that "Crampton had achieved simplicity, compactness, sturdiness, and ready mountability" (Trans. 190), as the result of improvements in an old art; that further he was entitled to a limited range of equivalents.

The Question

The question then becomes, whether or not the District Court, on unassailable true fact findings, rightly arrived at a finding of infringement under the applicable controlling decisions of the Supreme Court, and whether or not such claims 11, 12 and 13 are adequate, (Fact finding 12, Trans. 25), under a limited range of equivalents, to comprehend the substantially structurally identical respondent's lever, and one certainly structurally identical in a legal sense, achieving wholly identical beneficial results, in the same way by the same principles of operation.

The patent in question is a valid patent, sustained valid by both of the lower Courts.

The Decision of the Sixth Circuit Court of Appeals on Infringement.

The Appellate Court said Crampton was entitled to a limited range of equipments. It then held that the disclosure of the Crampton patent showed a lever 5 and a lateral extension 18 thereto in one piece, said extension passing through the base or spud member 8 and, thereafter, in the assembly, the handle at the outside was secured to the free end of said extension. He had eliminated entirely (so it was held) the "spindle" arrangement of the accused device, which connects with the part 15 which the Pleasant et al patent description (Trans. 160-2) called a "lever"; and that it was this "spindle" device to actuate said "lever" from the inside of the tank that the Court for the Sixth C. C. A. relied upon. Obviously here is glaring error, a play upon words and an ignoring of substance.

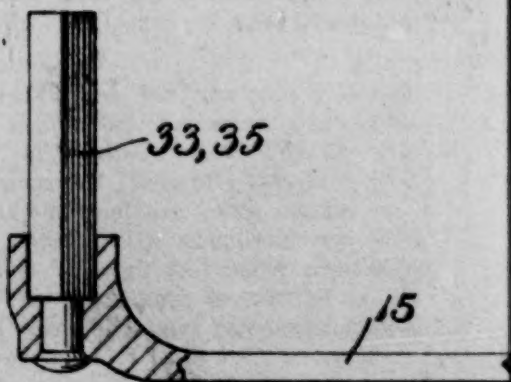
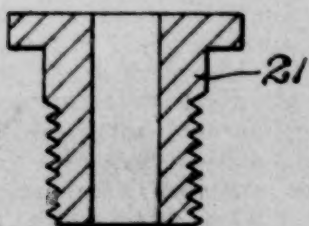
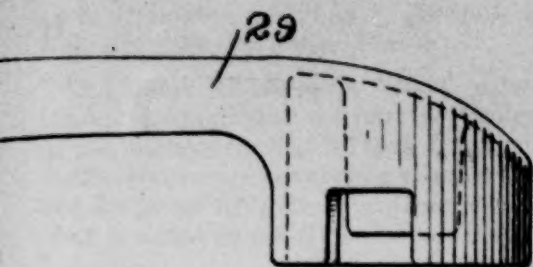
We call attention to the accompanying sketch, the lowest figure, showing the inside part 15, called "lever" in the patent to Pleasant et al, a lift arm, like 5 in Crampton, in its permanent connection with the part 33, 35, called a "spindle" in the Pleasant patent, the "extension" 18 in Crampton, with the handle 29 (in the upper figure) not attached. If this lowest figure structure is not the lever of Crampton consisting of the inside lift arm 5 and the extension 18, then what is? If such structure does not conform expressly and literally to claims 11, 12 and 13, defining that "the base (21) receives the lever" and that "the handle" (7) is mounted on the base exteriorly of the tank wall, and the handle is *permanently* secured to the lever", it is impossible to understand plain words of the English language.

The handle 29 of the Pleasant patent is exterior of the wall, is mounted on the base, and is integrally, therefore, *permanently* connected with this lateral "spindle" extension 33, 35 to the lever.

It is the position of the Appellate Court that the claims 11, 12 and 13 did not read *literally* upon the accused construction in that the claims define the base as rotatably receiving the lever and limiting its movement. As a fact they do; but when did bare, narrow literalism, for patent protection destruction come into being?

The Appellate Court by ignoring substance and operating upon a destructive play of words said that, as the part called "lever", at 15 in the Pleasant patent did not extend through the base, it was not rotatably received by the base and its rotation limited thereby.

The Circuit Court of Appeals ignored every principle of the law of patents covering the matter of divided and integral parts; that any two parts, where permanently and rigidly secured together are the same thing as integral and are so treated. Certainly the part called "lever" numbered 15 and the part 33, 35 in Pleasant et al (Trans. 160-e) called "spindle", are permanently, inseparably, and rigidly connected, and make exactly the same thing as the integral lever arm 5 and its extension





18 in Crampton. *Nathan v. Howard*, 143 Fed. 889, 892 (6th Cir. 1906, by Judge Lurton).

The Court of Appeals below, says in its decision, Crampton eliminated entirely the "spindle" arrangement of the accused device. There is an apparent idea that if this transverse connecting member between the handle and the inside lift arm, 18 in Crampton; 33, 35 in Pleasant et al, is called by a different name, that makes it different.

The English language is rich in words so that mechanical elements may have applied a large number of differing names, each meaning the same when applied to a particular structure. Indeed in the Theleen patent (Trans 148-b), showing an inside lift arm 5 and a lateral extension 6, such part 6 in Theleen is named, an "off-set rock shaft portion". Such designation of this part of flushing tank levers passing through the wall mounting fixtures or spuds is the best designation of all. Crampton has such "rock shaft portion" in his "extension" 18. The respondent's structure has its off-set "rock shaft portion" to his inside part 5 in the "spindle" 33, 35.

The claims 11, 12 and 13 do read literally on the respondent's structure giving them the meaning which they have, predicated upon the disclosure of the Crampton patent.

In the Crampton patent (Trans. 148) the part 5 at one end has a permanently connected "extension", or "off-set rock shaft portion", or "spindle" 18. The parts 5 and 18 are so securely connected (integral) that they will not break apart under any normal use. The handle outside, numbered 7, is permanently connected to this "lever", the lever passing through and being rotatably received in the base. The permanent connection is so sure and secure that no breaking apart can occur under any normal circumstances.

It is our understanding that this Court has expressly stated in *Continental Paper Bag Co. v. Eastern Paper Bag Co.*, 210 U. S. 405, 52 L. Ed. 1122 at p-1128, that,

"an inventor must describe what *he conceives to be the best mode*, but he is not confined to that. If this were not so, most patents would be of little worth".

Crampton disclosed and described what he conceived to be the best mode of embodying his invention. He did not create or invent the separation of the handle-rocking lever of a flush tank into two parts. It had been done in two ways before. One was like Theleen, (Trans. 148-b) in which a rod was bent to make a lateral extension or "off-set rock shaft portion", the handle being initially separate and never permanently connected. The other was like the several patents mentioned by the Court of Appeals in its decision, Davis, McNeil, Kirk and Clemons, in the Transcript, respectively, at pages 160-a, 160-b, 160-c, 160-d. In these a handle with an integral "spindle", which was to extend through the tank wall fixture or spud, and be an "off-set rock shaft portion" of the assembled lever, was detachably connected to an inside lift lever arm, initially formed separate, and never permanently connected.

Thus, the mounting of the spud on the rock shaft portion of the movable lever member had already been accomplished in the two ways: by slipping said spud over the free end of a "rock shaft portion" integral with the inside lift arm or over the free end of a "rock shaft portion" connected with the handle.

Crampton used the first as best in his estimation, and used normal English words to describe it. He showed one specific form as his best mode, as required by statute, but "he is not confined to that".

Crampton's invention improved these old levers. For the old levers were not *permanent* in connection, were not simple, were not made of the fewest number of parts, the base did not limit the lever rocking movement, they were not compact or rigid and durable, but were made of separable parts which were detachably connected together upon the assembly *on the tank*, as in Davis, Kirk, McNeil and Clemons; or which, if put together as in Theleen be-

fore mounting on the tank, readily come apart, the screw connected handle working loose with resultant damage. Theleen was ineffective and inefficient so that, as found, though it was put on the market by a well established and still operating manufacturer of plumber's supplies, it was withdrawn to be replaced by another which Crampton supplanted, and fell into "disuse" long before the time of Crampton (Trans. page 20).

Crampton, by his invention achieved the greatest simplicity ("simplicity is the highest form of invention"), compactness, durability, and economy in manufacture to a far greater degree than any earlier, such that he supplanted and superseded all others, because his lever consisting of the inside lift arm 5 and its rock shaft portion 18 and his outside handle were *PERMANENTLY* connected together to make an *integral* lever rocking member in every purpose and effect. Permanence of assembly insured durability.

The respondent's structure (Pleasant et al patent Trans. 160-e) gets a like simple, durable, compact, economical structure and unit ease of mounting by having the part 15 with its permanently connected (in substance integral) off-set rock shaft portion 33, 35, and handle permanently (integrally) attached to the outer end of the rock shaft to make identically the same simple, strong, durable, economically constructed, identical unit mounted tank lever.

Briefly, referring to the case of the Sixth C. C. A. on which it relies, *D'Arcy v. Marshall*, the facts were entirely different, the conditions entirely different, the limitation in the claim in D'Arcy had nothing to do with old environment, but was to a novel inventive step which greatly improved an old environment and imported very substantial beneficial results.

In the present case, the environment to which the invention is applied was old, in *two* old forms. The durability, compactness and simplicity of structure and of mounting, including economy and smallest number of parts, came from the permanent connection of the two

parts of the old rocking lever members such permanent connecting being where they were initially divided, in order to mount the spud. Such permanent connection had never been made previously. There was available, for application of the invention to both, two old environments, and the structures when completed, using either of the two old environments, were the same. The fact findings of the District Court so state.

Brief mention will be made only of the other portions of said claims 11, 12 and 13, because obviously everything else is identical. Such claims, expressly held valid by both lower Courts, were distinguished only on the part of the Appellate Court by an attempted, narrow, falsely literal reading of the clause "said base rotatably receiving and limiting the extent of rotation of said lever".

Said base is the *spud*. The lever in Crampton is the inside lift arm 5 and its rock shaft portion or "extension" 18 going through the spud.

In the respondent's structure, said lever is the inside lift arm 15 and its permanently, rigidly secured, in substance integrally connected off-set rock shaft 33, 35, which does go through and is rotatably received by the base or spud; but which the Appellate Court said was a "*spindle*", which Crampton did not have.

It is so obvious that the finding by the Sixth Circuit Court is erroneous that little need or should be further said. It is a fact finding of the 6th C. C. A., itself clearly erroneous, which sets aside the true findings of the District Court.

The Sixth C.C.A. Has Decided Contrary to the Applicable Decisions of this Court.

A very closely parallel case is that of *Sanitary Refrigerator Co. v. Winters, et al etc.*, 280 U. S. 30, 50 S. Ct. 9.

The invention in such case, a refrigerator latch, was in a crowded art, and not a pioneer patent entitled to

any broad range of equivalents, but was meritorious and soon attained a large measure of success. The infringing latch transposed some parts, making reciprocal changes in the form of the disclosure of the Winters and Crampton latch structure, but attained the same objects, was a close copy using the substance of the invention, and performed precisely the same offices in the same way with no change in principle. (In passing, it may be stated that the claims, which the Supreme Court held were infringed, were *not* "literally" applicable to the infringing structure). The Supreme Court upon the authority of *Burr v. Duryee*, 1 Wall. 531, 573, 17 L. Ed. 650; *Union Paper Bag Machine Co. v. Murphy*, 97 U. S. 120, 125, 24 L. Ed. 935; *Elizabeth v. Pavement Co.*, 97 U. S. 126, 137, 24 L. Ed. 1000; *McCormick v. Talcott*, 20 How. 402, 405, 15 L. Ed. 930; and *Ives v. Hamilton*, 92 U. S. 426, 23 L. Ed. 494, held there was infringement, as a close copy seeking to use the substance of the invention, showing some change in form or position, using substantially the same devices, performing precisely the same offices with no change in principle; and while there were some minor differences in form and structure, the variation made did not change it from being in substance, the same thing as the patented structure, and as mere colorable departures, that did not avoid infringement. We could refer to numerous other cases establishing the principles stated which have always held in the patent law.

The lower Court herein as a fact finding found there was mere colorable departure in minor detail of structure. Such colorable departure consisted obviously only in dividing the eventually completed, permanent, integral-in-effect, rocking lever member at a different point; at the opposite end of the rock shaft portion so as to pass through the base or spud. It would thus pass, both forms being old. But there was a permanent connecting of the initially divided parts, so that they were permanently secured, were durable and simply constructed, compact, unit installed and economical to make, exactly as in the patent in issue, making the same structure.

If the Court of Appeals for the Sixth Circuit did not deliberately set aside such certain and true findings of fact of the lower court, it then must have obviously (not probably) decided this case in conflict with the applicable decisions of the Supreme Court.

The Sixth C.C.A. agreed there was a limited range of equivalents due the petitioner's patent. The Supreme Court in the cited case of *Sanitary Refrigerator Co. v. Winters, etc. supra*, expressly held that the Winters and Crampton patent, there considered was a narrow patent, having a limited range of equivalents; but the same substantive structure, identical in a legal sense, having every part cooperating in exactly the same way, getting the same functions, serving the same offices, no more and no less, spelled infringement, even though, as this Court held in the Sanitary Refrigerator case, the invention therein must be restricted to the form shown and described by the patentee, and could not be extended to embrace a new form which is a substantial departure therefrom. It then further expressly held:

"It is nevertheless infringed by a device in which there is no substantial departure from the description in the patent, but a mere colorable departure therefrom."

CONCLUSION

We are aware that granting a petition for certiorari is not a matter of legal right. We are aware that in a case where there can be sincere debate upon the soundness of the decision of a Circuit Court of Appeals the petition is seldom granted. If this was such a case this petition would not be filed.

We take it that the provisions of Rule 38 of the Supreme Court of the United States in its sub-division (5) means what it says, namely, that such writs may be granted when a federal question "has been decided in a way probably in conflict with applicable decisions of this Court."

We do not base this petition and ask for this writ upon *probability* of conflict with the applicable decisions of this

court. We base it upon *indisputable conflict* with the applicable decisions.

We further submit that this writ of certiorari should be granted because of violent non-observance of Rule 52(a) of the Civil Rules of Procedure. As a matter of wide and generally important interest, the Circuit Courts of Appeals of this country should be informed and directed with respect to such rule and that it is to be observed.

. . .

We are further aware and conscious of a widespread feeling, the country over, that a patent is something disreputable, a *monoply*, and that the patent owner should be considered as a to-be-reviled "monopolist", and everything possible used as a weapon against patents; wholly contrary to that liberal treatment of patent property so universally held to be the rule by the Supreme Court, when a meritorious advance has been made. *Eibel Process Co. v. Minnesota and Ontario Paper Co.*, 43 S. Ct., 322; 261 U. S. 45.

We think this has resulted to a large degree from a very mistaken view, by many, of the Supreme Court decisions of the last decade, in which the property *exclusion*, granted by a patent (such "exclusion" is inherent in all property), has been properly restricted and defined to what it actually is, and the owner of the patent has been held within the limits of his property and not permitted to unlawfully extend beyond the rightful boundaries which it has. Actual monopoly can be based upon misuse of any property; which is not to be considered as an evil of *property*, but an evil of those who use property in an indefensible manner. But even as the familiar quotation, "The love of money is the root of all evil" is so frequently misstated as "money is the root of all evil", so the slanderously inaccurate are prone to ascribe evil to any property itself, where it is evilly used. We think an actual analysis of the late Supreme Court decisions, in connection with patent property, shows a check upon the abuse of such property by those graspingly minded, and that the actual and real property right, namely, the right of exclusion which a *valid* patent

has, has not been held by this court in any respect as in itself evil and odiously monopolistic. (Both lower Courts have held the Crampton patent herein *valid*).

Indeed, to do so would very greatly encourage those of the collectivist school of thought, who would like to have the *exclusion* which any and all property has, be held as evil, for the furtherance of their economic beliefs and aims. Referring to another species of property, real estate, the owner has *exclusive* possession, has the remedy of ejectment against anyone who wrongfully possesses it, (analogous to the injunction in patent suits), and has the remedy of damages for trespass (analogous to the accounting for patent property trespass). And, if a patent owner is to be a to-be-reviled monopolist, so is the owner of real estate or any other property; with which the collectivist will enthusiastically agree. Attack patent property today as monopolistic because it excludes non-owners and others having no rights thereunder, succeed in its substantial destruction. Then, tomorrow attack real or other property as monopolistic, because, similarly excluding non-owners and such others having no rights thereto, succeed at that, and the collectivist will be victorious all along the line.

The statement of Mr. E. R. Weidlein, Director, Mellon Institute of Industrial Research, appearing at page 81 in the February, 1946 issue of the Journal of the Patent Office Society, is illuminating. It says:

“Much has been said both for and against the operations of the patent system in recent years. Its most vociferous opponents have been those who are not only completely unfamiliar with the internal operations of modern competitive industry, *but are loudly unsympathetic with the economic system by which our country has attained its present position of eminence.* The patent system has thus become something of a *focal point for sustained attack on private enterprise as a whole*”.

As a support for the view that a great deal of popular and, in some cases, judicial beliefs (*Hoffman v. Berger, et al.*, 18 F. Supp. 632, at p. 634) that the Supreme Court

is strongly antagonistic to the property rights of patents (dubbed "monopolies") established by the Constitution of the United States, is wrong, the cases, *Goodyear v. Ray-O-Vac Co.*, 321 U. S. 275, and *Williams Mfg. Co. v. United States Machinery Corp.*, 316 U. S. 364, 62 S. Ct. 1179 are recent cases of this Court which deny such erroneous concept.

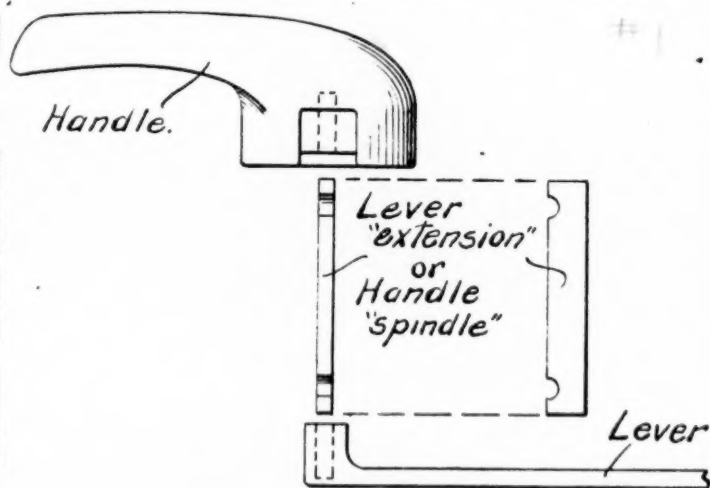
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It is, therefore, respectfully submitted that this case is one obviously calling for the exercise by this Court of its supervisory powers to direct Circuit Courts of Appeals as to their observance of Rule 52(a) of the Civil Rules of Procedure; and in order that gross injustice may be corrected, which injustice has been perpetrated by deciding, not "probably" in conflict with the applicable decisions of this Court, but in *clearly evident* and *definite* conflict with such decisions; and that, a writ of certiorari should be granted and this Court should review and reverse the decision of the Court of Appeals for the Sixth Circuit as to its holding of non-infringement of claims 11, 12 and 13 of the Crampton patent in issue.

Respectfully submitted,

FRANK E. LIVERANCE, JR.,
Counsel for Petitioner.

Grand Rapids, Michigan.
March 15, 1946.

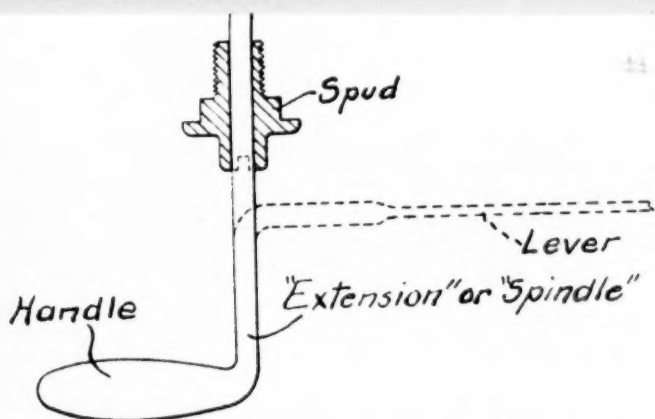


A rocking handle and lever assembly initially in three parts

If the "extension" or "spindle" was first permanently connected at one ^{end} to the lever; the spud put over it, and the handle then permanently secured at the other end, as Crampton does in assembling, would that be infringement?

If the "spindle" was first permanently secured at one end to the handle, the spud put over it, and the lever then permanently secured at the other end, as Pleasant et al does, would that be no infringement, in accord with the decision of the Sixth C. C. R.?

If the spud was put over the "extension" or "spindle", and the handle and lever permanently secured simultaneously at its opposed ends, what would it be?



A rocking lever and handle made from a single rod length.

The rod, near one end, has a section bent at right angles and pressed and shaped into a handle. The spud is slipped over the other end of the rod nearly to the handle. The rod is then bent to the dotted line position as shown. Lever, the "spindle" or "extension" or "off-set rock shaft portion," and handle are literally integral.

Is the part between the lever and handle, an "extension" to the lever, or a "spindle" integral with the handle; in the first case an infringement, and in the second not infringing?

Or, is sophistry in word or name manipulation to be discarded, and substantial identity in structure rule infringement?